

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

CRIMINAL APPEAL NO. 315 OF 2005

Office Notes, Office Memoranda of Coram
appearances, Court's orders or directions
and Registrar's orders.

Court's or Judge's Orders

Shri A.S. Fulzele, APP for the appellant/State.
Shri P.B. Patil, Advocate for the respondents.

CORAM : P.S. BRAHME, J.
22ND NOVEMBER, 2006

Heard the learned Counsel appearing on
behalf of the respective parties.

Perused the R and P including the judgment
impugned.

The respondents, who were original accused
in Regular Criminal Case No. 172/1998, were tried for the
offence under Section 2(ia)(a), 2(ia)(m) of the Prevention
of Food Adulteration Act, 1954 and offence under
Section 7(i) read with Section 2(ia)(a) punishable under
Section 16(1)(a)(ii) of the Prevention of Food
Adulteration Act. As per the prosecution case, the
complainant Shri S.A. Chougule, the then Food
Inspector on 05.09.1996 visited Sanjay Kirana Stores.
The said shop was managed by the respondents. The
Food Inspector purchased 450 gms. refined cotton seed

oil and the same sample was taken in clean, dry and empty steel pot and after stirring the said sample was seized by following procedure by making panchnama before it is sent to the Public Analyst, Pune and also Local Health Authority. According to the reports of the sample, it was found to be adulterated. After obtaining sanction for prosecution from the Joint Commissioner, a complaint came to be filed in the Court of JMFC, Deulgaon Raja. The respondents were tried after the charge was framed. The accused persons pleaded not guilty. Their defence was that the complainant had not followed proper procedure while taking the sample. They prayed for acquittal. The prosecution examined Shri Kamble, Local Health Authority and the complainant Shri S.A. Chougule. After taking into consideration the evidence on record, the trial Court vide judgment and order dated 14.10.2004 acquitted the respondents mainly on the ground that the complainant, Food Inspector has not drawn the sample by following the procedure laid down and not given opportunity of stirring the sample of oil so as to make it homogeneous and representative. The trial Court has also observed in para 30 that the sanctioning authority has not gone through the papers and as such there was total non application of mind while granting sanction for

prosecution. In the result, the respondents came to be acquitted of the offence with which they were charged. Hence, this appeal so also leave to appeal.

Shri A.S. Fulzele, the learned Additional Public Prosecutor, appearing on behalf of the appellant/State vehemently submitted that the finding recorded by the learned trial Court as regards the drawing of sample and more particularly in not properly stirring the sample is against the evidence on record. So also as regards the defect in according sanction by the sanctioning authority, the trial Court has committed an error in stating that there was a clerical mistake. The learned trial Court has come to the conclusion that there was non application of mind by the sanctioning authority while according sanction.

As against that, Shri P.B. Patil, the learned Counsel appearing on behalf of the respondents, supported the judgment. He submitted that the quantity of cotton seed oil was 13 to 14 kgs. and for drawing the sample as it was mandatorily required to stir it properly to make it homogeneous and representative, the Food Inspector has stirred the huge quantity of cotton seed oil with measure of 500 ml.. There is also no evidence that the pot in which the sample was brought was clean as it is required. He, further, submitted that though

panchnama was made on the spot, the prosecution did not examine panch witness who happened to be an independent witness to corroborate the testimony of the Food Inspector. So, in this background, the findings recorded by the learned trial Court as regards the sample drawn by the Food Inspector is quite reasonable and proper. He has also submitted that even on the point of sanction, the trial Court has rightly said that the sanctioning authority has not gone through all the documents and, therefore, there was no application. It is submitted with emphasis that the sanctioning authority has not been examined by the prosecution at the trial. The learned Counsel also pointed out that the report of Public Analyst so also the report of Central Food Laboratory in respect of the same, there is no consistency though ultimate finding is that the sample was adulterated. It is submitted that this itself reflects that the sample that was drawn was not properly stirred so as to make it homogeneous and representative. He, therefore, urged that the learned trial Court has not committed any error in acquitting the respondents.

I have carefully considered the submissions made by the learned APP and the learned Counsel appearing on behalf of the respondents. It is needless to state that when the accused is charged with and tried for

the offence under the Food Adulteration Act, the offence being technical, it is imperative that the Food Inspector is required to follow and abide by mandatory requirements of the same. Till that for getting sample of an article which is a liquid as cotton seed oil, in the present case, utmost care is required to be taken by the Food Inspector while drawing the sample. The article should be stirred properly so as to make it homogeneous and representative one so that it is fit for analysis. In other words, the stirring of the sample is not proper, that may affect the process of analysis so also the reasons of the analysis. In the instant case, a very fact that while drawing the sample, a bulk of cotton seed oil which was almost 13 to 14 kgs. was stirred with a measure of 500 ml. In my opinion, this itself goes to show that the stirring of the sample is not proper and as it is found by the learned trial Court it was neither homogeneous nor the representative one. In this context, the trial Court has rightly placed reliance on the decision in the case of Satyanarayan .v. Mohanlal (reported in 1999 F.A.G., 23 M.P. High Court), wherein it has been held that the sample of ground-nut oil if taken without stirring the oil and making it homogeneous cannot be said to be a representative sample and conviction cannot be based on such sample. As pointed out in the earlier part of the

order, in the absence of any independent evidence, mere statement of complainant i.e. sample was stirred, cannot be accepted. Therefore, the learned trial Court has committed no error in acquitting the respondents on that ground.

The second ground on which the trial Court acquitted the respondents was that of infirmity in granting sanction for prosecution by the sanctioning authority. The learned trial Court has dealt with on this aspect in para 30. It is pertinent to note that when defence has questioned the correctness of the sanction accorded and that too on the ground that there was no proper application of mind, it was absolutely necessary for the prosecution to examine the sanctioning authority. The reason being the sanctioning authority was the only person who could have explained as to what he actually did and which documents he has gone through while granting sanction. Therefore, in the absence of that, merely the order of sanction filed on record is not sufficient to hold that the sanction accorded was proper. Therefore, even on that ground, the learned trial Court has committed no error in acquitting the respondents.

As pointed out earlier, there is disparity as regards the contents of the report of Public Analyst and

the report by the Central Food Laboratory. It is true that and in a way the learned APP is right in his submission that in spite of some disparity as to contents of the report, the finding in both the reports is that the sample was adulterated. But, then, as I have pointed out earlier, disparity or inconsistency about the contents does reflect on the drawing of the sample. In other words, it shows that the sample that was drawn was neither homogeneous nor representative. This was obviously because of incorrect stirring of the sample.

In the result, the finding of acquittal recorded by the learned trial Court is found to be correct and according to law. This being appeal against acquittal, interference by the appellate Court is only possible if the finding recorded is either grossly illegal or perverse resulting into miscarriage of justice. That is not so in so far as the case at hand is concerned. So the leave to file is refused and appeal is dismissed in limine.

JUDGE

*rrg.